IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

OP.No. 13208 of 2002(V)

PETITIONER:

ELAVUNKAL ROSAMMA, AGED 46 YRS, W/O. O.MATHEW, ELAVUNKAL, KOORAMKUNDU, PLACHIKA, PARAPPA, HOSDURG.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:
----

1. THE DISTRICT REGISTRAR, KASARGOD.

2. THE SPECIAL DEPUTY TAHASILDAR (RR), HOSDURG.

BY GOVERNMENT PLEADER SMT. D.P.RENU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO. 13208/2002 V

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE SALE DEED DT. 27/8/98 OF THE SRO BALAL.

EXT.P2. COPY OF THE NOTICE DT. 4/5/2002 ISSUED BY THE R2.

[True copy]

tga

P.R.RAMAN, J.

O.P.NO. 13208 OF 2002

Dated this the 1st day of January, 2007

J U D G M E N T

Petitioner aggrieved by Exhibit P2 demand notice issued under Section 7 of the Revenue Recovery Act seeking to recover an amount of Rs.22,800/- towards deficit stamp duty has approached this court by filing this OP.

2. According to the petitioner prior to the revenue recovery proceedings respondent has not issued notice before passing any orders under the Stamp Act. It is also averred that there is no under valuation as alleged. In the counter affidavit filed by the respondents, it is averred in Para 4 that based on the report from Sub Registrar, notice was issued to the petitioner by ordinary post for submitting a representation against the report of the Sub Registrar. But no representation was received. Hence a provisional order was passed, that also was send by ordinary post requiring the petitioner to remit an amount of Rs.22,800/-. Thereafter a final order was passed on 25/5/99 finalising the amount. That is also send by ordinary post. In other words, absolutely no record is there to show that the petitioner received any communication from the respondents. In case of any under

valuation, it is mandatory that prior notice of the proceedings shall be given to the aggrieved party and afforded an opportunity of being heard when the petitioner avers that no intimation was received, the burden is on the respondent to show that proper notice has been send and received by the petitioner. In so far as the averment goes, it only says that, that has been send by ordinary post. But as against the averment made in the affidavit filed by the petitioner denying the receipt thereof, the presumption if any stands rebutted and the burden shifts on the respondent to show that notice has been served on the petitioner.

3. In the circumstances, revenue recovery proceedings initiated against the petitioner by Exhibit P2 is clearly illegal and the same is liable to be quashed. I do so. It will not stand in the way of the respondent to issue fresh notice to the petitioner in case of any undervaluation for stamp duty by sending the communication by registered post with acknowledgment due and then proceed to finalise the same.

OP is allowed subject to the above observations.

P.R.RAMAN, JUDGE

Rp